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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/072,782

02/08/2002

James D. Webb

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05/06/2003

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EXAMINER

MALLARI, PATRICIA C

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 05/06/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,782

Applicant(s)

WEBB ET AL.

Examiner

Patricia C. Mallari

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 6) ☐ Other: \_\_\_\_\_

***Claim Objections***

Claim 1 is objected to because of the following informalities: "requests" on line 6 if the claim should read "at least one request". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 26-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 29 recites the limitation "encrypting the request on the server at a second selected time in response to notification that a monitor at a second location is substantially ready to receive the request" on lines 5-7 of the claim. The specification lacks ample description of a notification that a monitor is ready to receive a request and lacks ample description of the server encrypting the request one such a notification is received.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 6, 8, 9, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "The apparatus of claim 5". There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation " the decrypted requests" on line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 18 is written in improper method claim format. Method claims must be active. For example, claim 18 should read "The method of claim 17, wherein authorizing further comprises selecting a particular implantable medical device that the clinician may program from among a plurality of implantable medical devices."

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 4-9, 16, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Snell et al. Snell teaches a distributed system 100 having a set of

network programmers 104 that communicate with implantable medical devices 105 using telemetry system 120. A telemetry system implemented in a system that includes implantable device inherently uses radio frequency. The server 102 receives commands and data from the programmers 104 via network 107 and stores data in database 103. Under physician's control, network server 102 send commands to the implantable medical device 105 via programmers 104. Software updates to the programmers 104 are loaded onto the server 102 and then transmitted to the network programmers 104. Appropriate security measures and data integrity checks are implemented using any hardware and software means, such as communications protocols, handshaking, and encryption, in order to ensure the validity of data exchanged between the programmer 104 and the server 102 (fig. 1, Table I).

The applicant should note that, in all the apparatus claims, the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 10, 13-15, 17-19, 22-25, 27 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell et al. in view of Brown. Snell teaches a

distributed system 100 having network programmers 104 that communicate with implantable medical devices 105 using telemetry (radio frequency) system 120. The server 102 receives commands and data from the programmers 104 via network 107 and stores data in database 103. Under physician's control, network server 102 send commands to the implantable medical device 105 via programmers 104. Software updates to programmers 104 are loaded onto server 102 and then transmitted to the network programmers 104. Appropriate security measures and data integrity checks are implemented using any hardware and software means, such as communications protocols, handshaking, and encryption, in order to ensure the validity of data exchanged between the programmer 104 and the server 102 (fig. 1, Table I). Snell is silent as to the details of the security measures and data integrity checks.

However, Brown teaches a system wherein a healthcare professional can access a clearinghouse 54 using a data communication between a computer 62 and the clearinghouse 54. Once the communication is established, the professional can transmit an authorization code to clearinghouse 54 that identifies the healthcare professional as an authorized user of the clearinghouse and can transmit a signal representing the patient for which healthcare information is being sought (fig. 2). Therefore, it would have been obvious at the time of invention to combine the system of Brown with the system of Snell, since the system of Snell utilizes any hardware and software means as security measures and data integrity checks, and Brown describes such means. The combination would maintain appropriate safety levels for patients being treated with the network programmer.

Claims 11, 12, 20, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell in view of Brown, as applied to claims 2, 3, 10, 13, 15, 17-19, 22-25, and 30-32, and further in view of Brown et al. Snell, as modified, lacks a Virtual Private Network or Secure Socket Layer connection as the secure bi-directional communications system. However, Brown et al. discloses that health data exchange may be transmitted in a secure manner via encryption or by technologies, such as secure socket layer (SSL) or virtual private networks (VPN) (col. 4, lines 49-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use SSL or VPN as part of the security measures in Snell, as modified by Brown, since the system of Snell, as modified, includes any appropriate means as security measures and data integrity checks and Brown et al. teaches SSL and VPN as such appropriate means. This combination would further ensure appropriate safety levels for patients being treated with the network programmer.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell in view of Brown et al. Snell teaches a distributed system 100 having network programmers 104 that communicate with implantable medical devices 105 using telemetry (radio frequency) system 120. The server 102 receives commands and data from the programmers 104 via network 107 and stores data in database 103. Under physician's control, network server 102 send commands to the implantable medical device 105 via programmers 104. Software updates to programmers 104 are loaded onto server 102 and then transmitted to the network programmers 104. Appropriate security measures and data integrity checks are implemented using any

hardware and software means, such as communications protocols, handshaking, and encryption, in order to ensure the validity of data exchanged between the programmer 104 and the server 102 (fig. 1, Table I). Snell is silent as to the details of the security measures and data integrity checks.

However, Brown et al. discloses that health data exchange may be transmitted in a secure manner via encryption or by technologies, such as secure socket layer (SSL) or virtual private networks (VPN) (col. 4, lines 49-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use SSL or VPN as part of the security measures in Snell, in order to further ensure appropriate safety levels for patients being treated with the network programmer.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6250309 to Krichen et al.

U.S. Patent No. 6539947 to Boies et al.

U.S. Patent No. 6358202 to Arent

U.S. Patent No. 638102 to Sieracki et al.

U.S. Patent No. 6304738 to Eady et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia C. Mallari whose telephone number is (703) 605-0422. The examiner can normally be reached on Mon-Fri 9:30 am-7:00 pm (alternate Fri. off).



Art Unit: 3736


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (703) 308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-8117 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

pcm

May 2, 2003

*for your info.*

  
MAX F. HINDENBURG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700